

COMMISSIONERS APPROVAL

ROKOSCH *gsk*

GRANDSTAFF *gsk*

THOMPSON *at*

CHILCOTT *gsk*

DRISCOLL *gsk*

PLETTENBERG (Clerk & Recorder)

Date.....November 27, 2007

Members Present..... Commissioner Jim Rokosch,  
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, and Commissioner  
Kathleen Driscoll

Minutes: Beth Perkins

Commissioner Chilcott attended the MACo JPA Trustee Retreat in Red Lodge

The Board met for a public meeting for Mountain View Orchards Block 3, Lot 12 AP  
Minor Subdivision. Present were Planners John Lavey and Randy Fifrick, Applebury  
Survey Representative Terry Nelson and Owners Russell & Cheryl Esau.

Commissioner Rokosch called the meeting to order and requested any conflicts of  
interest, hearing none. He then requested the Planning Staff Report be read.

Randy presented the Staff Report as follows:

**MOUNTAIN VIEW ORCHARDS, BLOCK 3, LOT 12, AP (ESAU)  
FOUR-LOT MINOR SUBDIVISION**

**STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:** Randy Fifrick

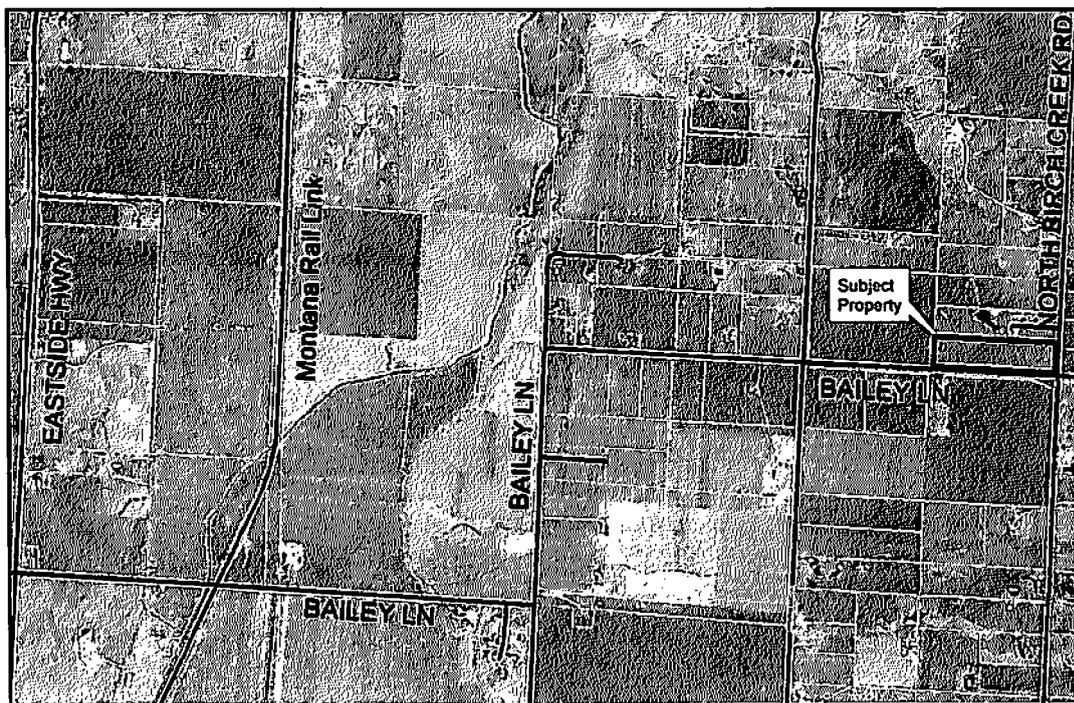
**REVIEWED/  
APPROVED BY:** John Lavey

**PUBLIC HEARINGS/  
MEETINGS:** BCC Public Meeting: 9:00 a.m. November 27, 2007  
Deadline for BCC action (35-working days): December 4, 2007

**SUBDIVIDER/OWNER:** Russell & Cheryl Esau  
PO Box 412  
Corvallis, MT 59828

**REPRESENTATIVE:** Applebury Survey  
914 US Highway 93  
Victor, MT 59875

**LOCATION OF REQUEST:** The property is located northeast of Corvallis on the corner of Bailey Lane and North Birch Creek Road. (See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

A portion of the NW ¼ of Section 11, T7N, R20W,  
P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision application was determined complete  
on October 12, 2007. Agencies were notified of the

subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-8 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

**LEGAL NOTIFICATION:** Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked November 9, 2007. No public comments have been received.

**DEVELOPMENT  
PATTERN:**

Subject property	Farmstead Rural
North	Residential Rural
South	Farmstead Rural
East	Vacant Land Rural and Approved
Subdivision	
West	Vacant Land Rural

**INTRODUCTION**

The Mountain View Orchards Block 3, Lot 12, AP minor subdivision is a four-lot subdivision of 9.5 acres located northeast of Corvallis. The proposed development is located in an area of mixed residential and agricultural uses. All lots are proposed for residential uses. Because the application was deemed sufficient after October 1, 2007, the applicant is required to provide a dedication of 0.48 acres of land – or cash in lieu equivalent – to fulfill park dedication

*Staff recommends conditional approval of the subdivision proposal.*

**RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS  
NOVEMBER 27, 2007**

**MOUNTAIN VIEW ORCHARDS BLOCK 3, LOT 12, AP  
FOUR-LOT MINOR SUBDIVISION**

**RECOMMENDED MOTION**

That the Mountain View Orchards Block 3, Lot 12, AP Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE  
SUBDIVISION**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

**Notification of Proximity to Agricultural Operations.** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

**Limitation of Access onto a Public Road.** A "no-ingress/egress" restriction exists along the Bailey Lane and North Birch Creek Road frontages of this subdivision, excepting the approved approaches to Bailey Lane. All lots within this subdivision must use these approved approaches. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. *(Effects on Local Services and Public Health & Safety)*

**Notification of Common Access Maintenance Agreement.** The common access is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Common Access Maintenance Agreement for the access was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Effects on Local Services)*

**Notification of Water Rights.** Residents within this subdivision have irrigation rights from the Bitterroot Irrigation District, administered through the Mountain View Water Users Association. *(Effects on Agricultural Water User Facilities)*

**Notification of Irrigation Facilities and Easements.** Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The downstream water rights holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitterroot Irrigation District or Mountain View Water Users Association have the right to use the easements to maintain the ditches. Please contact the BRID, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182 for more information. *(Effects on Agricultural Water User Facilities)*

**Notification of No-Build/Alteration Zone.** Within this subdivision there is a no-build/alteration zone located on Lots 12C and 12D, as shown on the plat, to restrict building in areas with riparian vegetation and wetlands. No new structure, with the exception of fences, may be constructed in this area. No new utilities may be constructed in this area. No fill may be placed in this area and the vegetation shall be retained in its natural condition. Roads, trails, and

utility crossings through this area are not permitted. (*Effects on Natural Environment, Wildlife & Wildlife Habitat, Public Health & Safety*)

**Notification of Proximity to Bunkhouse Creek.** Bunkhouse Creek is an intermittent stream that runs through Lots 12C and 12D. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding, and movement of the stream channel. It is recommended that homeowners obtain flood insurance. (*Effects on Natural Environment and Public Health & Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

**Waiver of Protest to Creation of RSID/SID.** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

**Living with Wildlife.** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov). (*Effects on Wildlife and Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees** or orchards can attract wildlife such as bear and deer. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet

or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, uses properly constructed electric fences and maintain these constantly. (Contact FWP for information on "all-species electric fencing" designed to exclude wildlife from gardens and/or home areas.)

- c. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bear and raccoon. It is best to not set garbage cans out until the morning of garbage pickup and to bring them in no later than that same evening.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food and/or livestock feed** should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

- h. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps.
- k. **Apiaries (bee hives)** could attract bears in this area and [should be avoided/are not allowed] in this subdivision. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

***Riparian use guidelines.*** The upper end of Bunkhouse Creek flows roughly southeast to northwest through Lots 12C and 12D. On each side of the drainage is a "no-build/alteration zone" (buffer zone) depicted on the plat. Encouraging the development of native vegetation (including shrubs and trees)--while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this natural drainage, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (*Effects on the Natural Environment and Wildlife & Wildlife Habitat*)

The following covenants, designed to guide use of this buffer zone, shall apply:

- a. No new building or alteration is allowed in the zone.
- b. Only non-motorized access and use of the buffer zone is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of habitat and contributes significantly to overall slope stability, and dead trees also function as important wildlife nesting habitat.

Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.

- d. Do not plant lawns or crops in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In general, keep livestock out of the natural drainage, and do not include the drainage in corrals. Use fences to keep livestock from trampling and grazing riparian vegetation in the buffer zone.
- g. In summary, allow riparian areas--the creek and its buffer zone--to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- h. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

***Lighting for New Construction.*** To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit [www.darksky.org](http://www.darksky.org). (*Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety*)

***Required Posting of County-Issued Addresses for Lots within this Subdivision.*** The Corvallis Rural Fire District has adopted the Fire Protection Standards, which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (*Effects on Local Services and Public Health & Safety*)

***Access Requirements for Lots within this Subdivision.*** The Corvallis Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please

contact the Corvallis Rural Fire District for further information. (*Effects on Local Services and Public Health & Safety*)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (*Effects on Public Health & Safety*)

**Wood Stoves.** The County recommends that home owners install EPA-certified wood stoves to reduce air pollution. It is recommended that wood burning stoves are not the primary heat source. More information is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Credit (<http://mt.gov/Revenue/energyconservation.asp>) for the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. (*Effects on the Natural Environment*)

**Control of Noxious Weeds.** A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Effects on Agriculture and Natural Environment*)

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (*Effects on all six criteria*)

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (*Effects on Local Services and Public Health & Safety*)
5. Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water

storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*

6. The following statement shall be shown on the final plat: "The Corvallis Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". *(Effects on Local Services and Public Health & Safety)*
7. The subdivider shall submit a letter or receipt from the Corvallis School District stating that they have received an (amount)-per-lot contribution prior to final plat approval. *(Effects on Local Services)*
8. The subdivider shall submit an (amount)-per-lot contribution made prior to final plat to an account for Public Safety (Sheriff, E-911, OEM) to mitigate impacts on local services and public health and safety. *(Effects on Local Services and Public Health and Safety)*
9. All existing and proposed irrigation easements shall be shown on the final plat as they were shown on the preliminary plat. *(Effects on Agricultural Water User Facilities)*
10. The subdivider shall pave the common approach a minimum of 20 feet wide from the surface of Bailey Lane back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the Ravalli County Road and Bridge Department, if specified in the approach permit. *(Effects on Local Services)*
11. The subdivider shall provide for an additional 5 (five) feet of public road and utility easement along the Bailey Lane frontage of the subdivision on the final plat. *(Effects on Local Services and Prerequisite to Approval B)*
12. The final plat shall show a 100-foot no build/alteration as shown on the preliminary plat to protect the natural drainage of Bunkhouse Creek and any associated wetland and/or riparian areas. *(Effects on Natural Environment and Effects on Wildlife and Wildlife Habitat)*
13. The final plat shall show a non-ingress/egress zone along the Bailey Lane and North Birch Creek Road frontages of the subdivision, excepting the approved accesses off Little Bailey Lane. *(Effects on Local Services and Public Health and Safety)*

14. The following statement shall be shown on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (*Effects on the Natural Environment*)

### **FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)**

*The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.*

1. A statement from the project surveyor or engineer outlining how each final plat requirement or condition of approval has been satisfied shall be submitted with the final plat submittal.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) shall be submitted prior to final plat approval. The final plat shall conform to the preliminary plat decision. The following features are required on the Final Plat:
  - a. Project name
  - b. Title block
  - c. Certificate of registered owner – notarized
  - d. Certificate of registered land surveyor with seal
  - e. Certificate of governing body approval
  - f. Signature block for Clerk and Recorder, preferably in lower right hand corner
  - g. Certificate of public dedication
  - h. Certificate of park cash-in-lieu payment
  - i. Other certifications as appropriate
  - j. North arrow
  - k. Graphic scale
  - l. Legal description
  - m. Property boundaries (bearings, lengths, curve data)
  - n. Pertinent section corners and subdivision corners
  - o. Names of adjoining subdivisions/certificates of survey
  - p. Monuments found
  - q. Witness monuments
  - r. Acreage of subject parcel
  - s. Curve data (radius, arc length, notation of non-tangent curves)
  - t. Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
  - u. Lots and blocks designated by number (dimensions/acreage)
  - v. Easements/rights of ways (location, width, purpose, ownership)
  - w. Dedication for public use (boundaries, area, purpose)
  - x. No-build/alteration zones

- y. No-ingress/egress zones
  - z. Water resources (rivers, ponds, etc.)
    - aa. Irrigation canals including diversion point(s), etc.
    - bb. Existing and new roads (names, ownership, etc.)
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
  4. Any variance decisions shall be submitted with the final plat submittal (none have been requested at this time).
  5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
  6. The final plat review fee shall be submitted with the final plat submittal.
  7. Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
  8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
  9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
  10. Copy of the General Discharge Permit for Storm water Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
  11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
  12. A copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurer's Office for the payment of cash-in-lieu of parkland dedication, shall be submitted with the final plat submittal.
  13. Road and driveway approach and encroachment permits shall be submitted with the final plat submittal.
  14. Engineering plans and specifications for all central water and sewer systems and any other infrastructure improvements requiring engineered plans shall be submitted with the final plat submittal.
  15. Utility availability certification(s) shall be submitted with the final plat submittal.
  16. Common access maintenance agreement, signed and notarized, shall be submitted with the final plat submittal.
  17. A signed and notarized master irrigation plan, or if one is not required, written and notarized documentation showing how the water rights are to be divided or written and notarized documentation indicating that the water rights will be removed from the property shall be submitted with the final plat submittal.
  18. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch shall be submitted with the final plat submittal.
  19. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.

20. A copy of the letter sent to the appropriate school district(s) stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
21. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.)
22. The applicant shall provide evidence that the pro rata share of the cost to improve the portion of Bailey Lane leading to the subdivision has been paid prior to final plat approval. (Section 5-4-5(d), RCSR)

## SUBDIVISION REPORT

### COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

**A. Provides easements for the location and installation of any planned utilities.**

Findings of Fact

1. Existing utility easements are located along Bailey Lane abs North Birch Creek Road. (Application)
2. Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)

Conclusion of Law

The proposed subdivision application provides for utility easements.

**B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.**

Findings of Fact

1. The subject property is accessed by Bailey Lane. (Application)
2. Bailey Lane is listed as a County-maintained road. (Exhibit A of RCSR)
3. There are two existing accesses that will provide access to proposed Lot 12A and 12D. Lots 12B and 12C will be accessed by a proposed common access off Bailey Lane. (Plat)

4. *To ensure legal and physical access to the subdivision via Bailey Lane, the following shall be met:*
- *The applicant is required to pay the pro rata share of the cost to improve the portion of Bailey Lane leading to the subdivision prior to final plat approval. (Final Plat Requirement 22)*
  - *The subdivider shall provide for an additional 5 (five) feet of public road and utility easement along the Bailey Lane frontage of the subdivision on the final plat. (Condition 11)*
  - *Condition 10 requires the subdivider to pave the proposed common access.*

Conclusion of Law

Legal and physical access is adequate for this site.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Finding of Fact

The applicant is required to submit evidence that the following improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval (Final Plat Requirements 1, 14, and 21).

- *The subdivider shall pave the common approach a minimum of 20 feet wide from the surface of Bailey Lane back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the Ravalli County Road and Bridge Department, if specified in the approach permit. (Condition 10)*

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. The property has water rights through the BRID and Mountain View Water Users Association. (Application)
2. The property is currently being irrigated via an irrigation pipeline and risers. (Application)
3. The Mountain View Water Users Association approved the irrigation plan for this subdivision. (Application)

Conclusion of Law

With the approval from the Mountain View Water Users Association, this requirement has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. The applicant is proposing a 10-foot-wide irrigation pipeline easement traversing through the middle of the property from west to east across Lots 12A, 12B, and 12C. (Plat)
2. The placement of structures or the planting of vegetation other than grass within the irrigation easement is prohibited. (76-3-504(1) (k) MCA).
3. *To ensure that the appropriate irrigation easements are in place and future owners are aware they cannot plant or build within the easements, the following requirements and conditions shall be met prior to final plat approval:*
  - *A notification of the irrigation easements shall be included in the notifications document. (Condition 1)*
  - *The 10-foot wide irrigation easement is required to be shown on the final plat, as shown on the preliminary plat. (Requirement 2)*
  - *Section 3-4-4(a) (ii) (V) requires that the irrigation easements be shown on the final plat.*

Conclusion of Law

With the requirements and conditions of final plat approval, this prerequisite has been met.

- F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Findings of Fact

1. The applicant is proposing cash-in-lieu of parkland dedication. (Application)
2. The applicant is required to donate cash-in-lieu of .48 acres of land. (Application)
3. *A copy of the appraisal report, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurer's Office for the payment of cash-in-lieu of parkland dedication, shall be submitted with the final plat submittal. (RCSR Section 6-1-7)(Final Plat Requirement 12)*

Conclusion of Law

With the payment of cash-in-lieu prior to final plat approval, this requirement will be met.

**COMPLIANCE WITH APPLICABLE REGULATIONS**

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

**A. These regulations, including, but not limited to, the standards set forth in Chapter 5.**

**Findings of Fact**

1. The lot layout as indicated on the preliminary plat appears to meet the design standards in Chapter 5 of the RCSR.
2. This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**Conclusions of Law**

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The procedures for the application and review of this proposed subdivision have been followed.

**B. Applicable zoning regulations.**

**Findings of Fact**

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (RC GIS Data)

**Conclusion of Law**

This proposal appears to comply with existing zoning regulations.

**C. Existing covenants and/or deed restrictions.**

**Finding of Fact**

There are no existing covenants on the property. (RC Clerk & Recorder's Office)

**Conclusion of Law**

Since there are no covenants, this criterion does not apply.

**D. Other applicable regulations.**

**Findings of Fact**

1. Following are regulations that may apply to this subdivision:
  - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
  - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
  - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
  - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
  - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. The applicants were made aware of the applicable regulations at the pre-application conference held on February 7, 2007. (Application)

#### Conclusion of Law

The application appears to meet all of the applicable regulations.

- E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:**

#### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### Findings of Fact:

1. The proposed minor subdivision on 9.5 acres will result in 4 lots that range in size from 2.0 acres to 3.0 acres. The property is located approximately 6 miles northeast of the community of Corvallis. (Application)
2. The property is currently being used by horses for grazing. (Site Visit)
3. Parcels adjacent to the south of the subject property are classified for tax purposes as agricultural rural and farmstead rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
4. This parcel is classified for tax purposes as farmstead rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
5. The new soils data available from the NRCS Web Soil Survey (Exhibit A-6) shows there are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance. Farmland of local importance covers all of the property. In an email dated August 21, 2007, Jay Skovlin, local NRCS soil scientist, stated that the Farmland of Local Importance classification was not intended to be used to determine important agricultural land for subdivision review. It is the lowest tier of farmland soils and the criteria have a low threshold so this classification does not show the most productive soils in the Valley. The classification will be used as a preliminary screening tool for the Farm and Ranch Land Protection Program. (U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS)) (Exhibit A-6) (Exhibit A-7)
6. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed was scattered on the property. (Application)

7. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
8. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
  - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
  - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
  - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

**Conclusions of Law:**

With the mitigating conditions of approval and requirements of final plat approval, the impacts of the subdivision on agriculture will be reduced.

**CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

**Findings of Fact**

1. This subdivision has water rights (1.63 acre feet per year) through BRID and Mountain View Water Users Association. (Application)
2. The property is currently being irrigated via an irrigation pipeline and risers. (Plat) (Site Visit)
3. The irrigation rights will be divided between the four lots. (Application)
4. A letter from Mountain View Water Users Association states their approval of the re-allocation of water rights and Irrigation Plan for this subdivision. (Application)
5. The applicant is proposing a 10-foot-wide irrigation pipeline easement traversing through the middle of the property from west to east. (Plat)
6. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
  - a. *To notify future property owners of the irrigation rights and easements associated with this property and the role of the Irrigation District and to mitigate potential impacts on agricultural water user facilities, a notification of the irrigation facilities and easements shall be filed with the final plat. (Condition 1)*
  - b. *The 10-foot wide irrigation easement is required to be shown on the final plat, as shown on the preliminary plat. (Condition 9 and Final Plat Requirement 2)*

- c. *Section 3-4-4(a)(xxi) of the RCSR requires the approval of the downstream water users, in this case the Irrigation District, if irrigation infrastructure is to be altered. (Requirement 18)*

### Conclusion of Law

With the conditions and requirements of final plat approval, impacts to agricultural water user facilities will be reduced.

### CRITERION 3: EFFECTS ON LOCAL SERVICES

#### Findings of Fact:

#### Fire Department

1. The subdivision is located within the Corvallis Rural Fire District. (Application)
2. Notification letters were sent to the Corvallis Rural Fire District requesting comments on September 14, 2007 and November 9, 2007, but no comments have been received from the Fire Department. (Subdivision File)
3. The Corvallis Rural Fire District has adopted the Fire Protection Standards, which address access, posting of addresses, and water supply requirements.
4. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
  - *Provisions in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
  - *The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*
  - *Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Conditions 2 and 5)*
  - *The following statement shall be shown on the final plat: "The Corvallis Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". (Condition 6)*

#### School District

5. With this subdivision, it is estimated that approximately 1.5 school-aged children will be added to the Corvallis School District, assuming an average of 0.5 children per household (Census 2000).

6. A letter from the Corvallis School District was received on October 9, 2007. The letter states that the Corvallis School District has recently completed an Impact Fee Study that allows up to \$7300 per septic permit for school construction. (Exhibit A-2)
7. County School Superintendent, Ernie Jean, has provided the Planning Department the Budget Per Pupil/Tax Levy Per Pupil information for Ravalli County. According to the document, the tax levy per pupil, excluding capital, would be \$1,638 for the Corvallis School District. (Exhibit A-4)
8. The applicant is not proposing any mitigation at this time. (Exhibit A-8)
9. *To mitigate impacts on the School District, the applicant shall submit a letter or receipt from the Corvallis School District stating that they have received an (amount) per-lot contribution prior to final plat approval. (Condition 7 and Final Plat Requirement 20) (Staff Note: Since the applicants and the School District did not agree on an amount, staff recommends that the BCC negotiate an amount with the applicant and include the appropriate finding(s) supporting the amount in their decision.)*

#### Public Safety

10. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Application)
11. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on September 14, 2007 and November 9, 2007, but no comments have been received from the Sheriff's Office. (Subdivision File)
12. The application states that the response time to the subdivision is probably 15 to 20 minutes, if the car is dispatched from the courthouse in Hamilton. (Application)
13. The applicant is not proposing any mitigation at this time. (Exhibit A-8)
14. *To mitigate impacts on local services, the subdivider shall:*
  - *Submit an (amount)-per-lot contribution made prior to final plat into an account for Public Safety (Sheriff, E-911, OEM) to mitigate impacts on local services and public health and safety. (Condition 8)*
  - *Pave the common approach a minimum of 20 feet wide from the surface of Bailey Lane back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the Ravalli County Road and Bridge Department, if specified in the approach permit. (Condition 10)*

#### Emergency Services

15. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Dept. Marcus Daly Hospital was contacted but no comments have been received to date. (Application)
16. *To mitigate impacts on emergency services, the subdivider shall meet the following conditions and requirement:*
  - *The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*
  - *Paving the common approach a minimum of 20 feet wide from the surface of Bailey Lane back to the edge of the right-of-way/easement boundary or*

*a distance of 20 feet, whichever is greater, or as required by the Ravalli County Road and Bridge Department, if specified in the approach permit. (Condition 10)*

#### **Parkland Dedication**

17. The applicant is proposing cash-in-lieu of parkland dedication. Section 6-1-7 of the Ravalli County Subdivision Regulations requires the subdivider to hire a real estate appraiser legally qualified to appraise undeveloped land to determine the fair market value of land prior to final plat approval. In a letter received. (RCSR Section 6-1-7)
18. The parkland dedication required for this subdivision is .48 acres. (Application)

#### **Water and Wastewater Districts**

19. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Application)

#### **Solid Waste Services**

20. Bitterroot Disposal provides service to this site. (Application)
21. Notification letters were sent to Bitterroot Disposal requesting comments on September 14, 2007 and November 9, 2007, but no comments have been received. (Subdivision File)

#### **Utilities**

22. The proposed subdivision will be served by Ravalli Electric Cooperative and Qwest Communications. Utility companies have been notified of the proposed subdivision. (Application)
23. Notification letters were sent to both utility companies requesting comments on September 14, 2007 and November 9, 2007, but no comments have been received by either company. (Subdivision File)
24. *The following requirements will mitigate impacts of the subdivision on local utilities:*
  - *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
  - *The applicant shall submit utility availability certifications from Ravalli Electric Cooperative and Qwest Communications prior to final plat approval. (Final Plat Requirement 15)*

#### **Roads**

25. There are (4) four proposed single family residential lots within this subdivision. It is estimated at build-out that this subdivision will generate a total of 24 additional vehicular trips per day, assuming 8 trips per day per single-family dwelling. (Application)
26. Bailey Lane, a County-maintained road will provide access to the subdivision from Eastside Hwy. (Exhibit A RCSR, Application)

27. There is a proposed common access maintenance agreement for the subdivision included in the application. (Application)
28. To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:
- The applicant shall pay the pro rata share of the cost to improve the portion of Bailey Lane leading to the subdivision to meet County standards prior to final plat approval. (Final Plat Requirement 22)
  - A copy of the General Discharge Permit for Storm water Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)
  - A common access maintenance agreement shall be signed, notarized, and submitted for the proposed common approach. Additionally, a notification of the common access maintenance agreement shall be included in the notifications document. (Condition 1 and Final Plat Requirement 16)
  - To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)
  - The final plat shall show a no-ingress/egress zone along the Bailey Lane and North Birch Creek Road frontages of the subdivision, excepting the approach for the common access, as approved by the Road and Bridge Department, as shown on the preliminary plat. (Condition 13 and Final Plat Requirement 2)
  - The notifications document filed with the final plat shall include a statement notifying lot owners of the no ingress/egress restriction. (Condition 1)
  - The subdivider shall pave the common approach a minimum of 20 feet wide from the surface of Bailey Lane back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the Ravalli County Road and Bridge Department, if specified in the approach permit. (Condition 10)
  - The subdivider shall provide for an additional 5 (five) feet of public road and utility easement along the Bailey Lane frontage of the subdivision on the final plat. (Condition 11)

#### General

29. Growth impacts the quality of general services Ravalli County can provide to residents. (Exhibit A-5)

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

#### CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

##### Findings of Fact:

##### Air Quality

1. This proposed subdivision would add three new homes to an area of existing low density development between the Corvallis and Stevensville. (Plat) (Site Visit)
2. In an email dated January 10, 2007, the Montana Department of Environmental Quality (DEQ) identified the Hamilton and Missoula areas as communities with a high probability of failing to meet the recently revised National Ambient Air Quality Standards for particulate matter. Sources of particulate from this subdivision could be vehicles, and/or wood-burning stoves. There are no gravel roads accessing the subdivision. (Exhibit A-3)
3. *To mitigate impacts on air quality, the covenants shall include a recommendation that EPA-certified wood stoves should be installed to reduce air pollution and that wood burning stoves should not be used as the primary heat source. (Condition 2)*

#### Ground Water Quality

4. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application)
5. *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

#### Surface Water Features

6. Bunkhouse Creek drains an area less than 15 square miles and therefore did not require a floodplain analysis. The intermittent creek flows across Lots 12C and 12D of the proposed subdivision. (Application, Site Visit)
7. According to a letter received from FWP, the upper end of Bunkhouse Creek flows roughly southeast to northwest through Lots 12C and 12D. On each side of the drainage is a "no-build/alteration zone" (buffer zone) depicted on the plat. Encouraging the development of native vegetation (including shrubs and trees)--while discouraging actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this natural drainage, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (Exhibit A-1)
8. The applicant is proposing a "100-foot no-build zone from draw to protect natural drainage". (Plat)
9. FWP is recommending that this zone be labeled on the Final Plat as a "no build/alteration zone from Bunkhouse Creek to protect natural drainage". (Exhibit A-1)
10. *To mitigate the impacts on the natural environment, the following items shall be required:*
  - *The final plat shall show a "100-foot no build/alteration zone centered on the middle of the drainage to protect Bunkhouse Creek and the natural drainage." (Condition 12 and Final Plat Requirement 2)*

- *A notification of the no build/alteration zone shall be included in the notifications document. (Condition 1)*
- *A notification of the proximity of Bunkhouse Creek shall be included in the notifications document. (Condition 1)*
- *The Covenants shall include provisions stipulating uses within the riparian area of Bunkhouse Creek. (Condition 2)*

#### Light Pollution

11. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association)
12. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

#### Vegetation

13. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed is scattered on the property. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. (Application)
14. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (MCA 7-22-2152)
15. The Montana Natural Heritage Program found that there were no plant species of concern within the same sections as the subject property (Application).
16. *To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2 and Final Plat Requirement 11)*

#### Historical/Archeological Sites

16. The application states that there are no known sites of historical significance on the property.
17. *To ensure that any possible historical sites are preserved, the following statement shall be shown on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 14)*

#### Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval

#### **CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

### Findings of Fact:

1. In a letter received September 21, 2007, FWP stated that this property has a high likelihood of human/wildlife conflict and recommended including "living with wildlife" covenants. (Exhibit A-1)
2. FWP stated that wildlife such as white-tailed deer, coyote, fox and skunk are found in the area, as well as possible black bear, and numerous small mammal and bird species. (Exhibit A-1)
3. The upper end of Bunkhouse Creek flows roughly southeast to northwest through Lots 12C and 12D. On each side of the drainage is a "no-build/alteration zone" (buffer zone) depicted on the preliminary plat. Encouraging the development of native vegetation (including shrubs and trees)--while discouraging actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this natural drainage, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (Exhibit A-1)
4. The property is not located within big-game winter range. (FWP)
5. According to the Montana Natural Heritage Program, Townsend's Big-Eared Bat and Bobolink were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. The subdivider requested and received a waiver from the requirement to submit a sensitive species report because of lack of habitat on the property for all species. (Application)
6. *To mitigate impacts on wildlife and wildlife habitat, the following conditions shall be met:*
  - *The covenants shall include a living with wildlife section. (Condition 2)*
  - *The covenants shall include a riparian use guidelines section. (Condition 2)*
  - *The final plat shall show a 100-foot no build/alteration zone centered on the middle of the drainage to protect Bunkhouse Creek and the natural drainage. (Condition 12 and Final Plat Requirement 2)*
  - *A notification of the no build/alteration zone shall be included in the notifications document. (Condition 1)*
  - *The covenants shall include a provision recommending full cut-off lighting. (Condition 2)*

### Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

### CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

#### Findings of Fact:

##### Traffic Safety

1. Access is proposed off Bailey Lane from Eastside Hwy. (Application)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

##### Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Corvallis Rural Fire District, the Ravalli County Sheriff's Office, and Marcus Daly Memorial Hospital EMS Department. (Application)

4. *The requirements and conditions listed under Fire District, Law Enforcement, Emergency Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

#### Water and Wastewater

5. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application)
6. *To mitigate effects on water and wastewater, the following shall be met:*
  - *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*
  - *A notification of the no build/alteration zone shall be included in the notifications document. (Condition 1)*

#### Natural and Man-Made Hazards

7. The new soils data available from the NRCS Web Soil Survey shows that the soils of this subdivision are "somewhat limited" for road and building construction. (NRCS, Application)
8. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
9. *To mitigate possible impacts on public health and safety, the following conditions shall be met:*
  - *The covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
  - *The covenants shall include a statement regarding radon exposure. (Condition 2)*
  - *A notification of the proximity to Bunkhouse Creek shall be included in the notifications document. (Condition 1)*

#### Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

Commissioner Rokosch opened public comment.

Terry Nelson stated they agree with the Staff Report. This is a 4 lot subdivision with the wish to have a lot so Russell's Dad may build. The proposed mitigation is \$500 per lot for School, Fire and Sheriff.

Jeff Peters asked if there were any covenants on the property. Commissioner Driscoll replied no. Jeff stated he lives next door to this piece of property. His concern is without covenants, they could put 10 trailers and 100 goats on it if they want. He stated there are a lot of people walking up and down Bailey Lane and they may want to take it into consideration.

Russ Zucker stated he has land in the area. It doesn't raise the value of land by having a subdivision. Russell replied they do not have any intentions of placing trailers on the subdivision. Commissioner Driscoll explained the importance of having covenants. Commissioner Grandstaff suggested using the covenants on Jeff Peters' property as a template. Commissioner Thompson stated the homes on the Peters' property are more luxurious than what is being proposed here. Discussion followed regarding standard covenants.

Commissioner Rokosch stated he would like to discuss the covenants prior to final plat. He asked the Esau's what they would like to do. Russell replied he would like no single trailers. Commissioner Grandstaff stated for clarification, they mean 'stick framed houses' only but to 'grandfather' in the existing trailer on Lot 12A until it can be removed.

Jeff asked about livestock covenants. Commissioner Grandstaff replied they are moving in that direction. Commissioner Rokosch asked Russell if he is ready to address the issue. Russell and Cheryl replied 4 horses or cows per lot. No goats, sheep, or pigs. Terry suggested prior covenant language to restrict over-grazing livestock. Commissioner Thompson stated he does not agree with some of the subdivisions covenants. He has raised livestock his whole life but his primary function is raising children. He discussed having too many animals and cases of animal abuse and neglect. There needs to be a balance.

Commissioner Rokosch stated when you convert acreage into residential units; you have to look at the land use. Cheryl replied she would like to leave it open for 4-H participants. Commissioner Rokosch read a standard covenant regarding livestock and animal limitations. He requested the Esau's to consider adopting such a covenant.

Brian Waring stated he lives in Colorado but his parents have a ranch in Florence. He wanted to discuss how government is regulating people stating if you are going to look at the long term, you look from an American and property rights point of view. The government is now micro-managing the lives of landowners. He stated he came here today because he is having some difficulties with people that develop an acre of land and put 5 houses on it, while a rancher is only allowed one dwelling per 200 acres. Also, ranchers are not allowed to give children or grandchildren a family dwelling on the existing ranch.

Commissioner Rokosch stated State Law regulates the process for family transfers. Brian replied he has spoken to people who have children out of state that can not come here because they are not able to live on the family farm.

Commissioner Rokosch stated the county is in the middle of comprehensive planning for the purposes of zoning and he encouraged Brian to attend those meetings.

Commissioner Thompson called for a point of order.

Commissioner Rokosch called for any further public comment, hearing none. Public comment was then closed.

Commissioner Thompson asked Terry about the North Birch Creek right of way as he believes there was a previous public meeting in regard to abandonment. Terry replied the county owned a 40 foot road easement, (possibly a 50 foot) but they worked out a deal several years ago in regard to an abandonment of the easement. Commissioner Thompson stated he remembered there was an issue of possible erosion. Terry stated it was all a done deal.

Commissioner Rokosch opened Board discussion for the six criteria.

**Effects on Agriculture:** Commissioner Rokosch stated this property has been disclosed important for local agricultural use due to horses grazing there. He requested a donation for the Open Lands program due to the loss of agricultural land. He stated the Conservation District has expressed concern in regard to the mitigation issues. Commissioner Grandstaff read a portion of the Staff Report as it cites their concern, but it also stated it does not mean the Commissioners can not consider that. Commissioner Rokosch stated the Open Lands program will help finance easement funds which will to provide opportunities for working farms and ranches. He felt mitigation should provide funds for agricultural lands. Commissioner Rokosch stated the lots are 2 to 3 acres and there is some level of agricultural operation. Commissioner Grandstaff stated what they have done in the past is to review the criteria and then allow the landowners to mitigate those issues.

Terry replied they would like that opportunity. Commissioner Rokosch stated the regulations have changed and explained the impacts.

Commissioner Thompson stated a person can possibly get more agricultural usage out of smaller lots than larger lots and felt this subdivision does not create a loss of major agricultural production.

Commissioner Driscoll questioned Exhibit A-8. Commissioner Rokosch stated it does not imply all of the possibilities.

Howard Anderson stated there are four specific soil types and this property has poor soil.

Commissioner Driscoll asked if Exhibit A-8 relates to the soil findings. Commissioner Rokosch replied yes. He then reviewed Exhibit A-8 with the Board in relation to the soil rating.

Commissioner Rokosch stated the majority of the Board feels this land is being taken out of agricultural use. He stated the Commissioners 'suggested offer' is a \$500 contribution per unit to the Open Lands Program.

Commissioner Driscoll stated with land that is 100% farmland it is important to mitigate the fact that the ground is being taken out of production. Commissioner Rokosch asked for any further comment, hearing none.

**All Commissioners voted sufficiently mitigated with offer of \$250.00 to Open Lands Program.**

**Effects on Agricultural Water-user Facilities:** Commissioner Rokosch stated there is existing pipeline on the property. Commissioner Driscoll stated she feels any new wells affect the water table and how other people use it for agricultural use. Commissioner Grandstaff asked what the irrigation practices were prior to now. Howard replied it is the same as now. Ground water monitoring has been mostly required on the west side. The depths go from the shallowest at 58 feet but most go down to 120 feet. The water table is buried; it is not on the surface. It is semi-confined. The whole layer hits the Sapphire Mountains.

Russ asked why the rules were changed, particularly when he was required to do ground water monitoring. Commissioner Rokosch stated Environmental Health makes that designation. Howard replied properties on the west side generally require groundwater monitoring. However, all parcels are subject to the requirement of state law and are site specific. On the east side of the valley, unless they find evidence of shallow groundwater, they normally do not have to monitor. Russ stated he already had this done and he spent a lot of money. Commissioner Driscoll explained her concern regarding well water levels. Commissioner Thompson stated there is water allocated to this property in the amount of 8 inches. He stated he has a hard time understanding how well levels affect the water that is allocated.

Commissioner Driscoll restated her findings in regard to surface water and underground water being connected. She felt this is going to be affected because the county is within a closed basin with limited precipitation. Cheryl stated there is a problem with agricultural water being wasted. Commissioner Driscoll stated it is a Supreme Court ruling in Trout Unlimited versus DNRC - Smith River Case.

Commissioner Rokosch asked for any further comment, hearing none.

Commissioner Rokosch, Grandstaff and Thompson voted sufficiently mitigated.  
Commissioner Driscoll voted non-sufficiently mitigated.

**Effects on Local Services:** Commissioner Rokosch opened Board deliberation. He stated the offered mitigation for the Corvallis Fire District is \$500 per lot. For the Corvallis School District the offer is \$500 per lot. He stated Exhibit A-2 is a letter from the School District along with Exhibit A-5 budget per pupil. Commissioner Rokosch discussed impact fees with the total cost of educating a pupil. Commissioner Grandstaff questioned using the numbers from School Superintendent Ernie Jean versus the school districts that have done an impact fee study, such as Corvallis. Commissioner Rokosch stated the Board should consider the impacts. Commissioner Grandstaff replied she

understands the impacts should be considered, but is questioning which numbers they should utilize. Commissioner Rokosch replied she should separate the two. Commissioner Driscoll asked how they should get it grounded to suggest mitigation.

Commissioner Grandstaff stated Corvallis has done the impact fee study but their study has not been adopted. Their study shows a cost of \$7,300 per septic system which would mitigate the impact of housing a pupil educated in Corvallis. Cheryl questioned the amount. Commissioner Driscoll stated this discussion is a jumping off point for voluntary contributions by the developer.

Commissioner Rokosch stated there was a comment in the letter from Corvallis School District for appropriate bus turnouts for pick up. Jeff stated his concern is the bus shelter being too close to the road easement. He is concerned with a car sliding in bad weather and hitting the structure. Board discussion followed regarding bus turnouts and shelters.

Howard stated he has talked to several school districts. They replied they don't know if this is needed and felt the bus driver could talk to the people and would work something out. Commissioner Rokosch stated both himself and Commissioner Driscoll have met with the Transportation Committee for a discussion on their updated information and preferences. In most cases, they are asking for shelters. Commissioner Driscoll suggested they discuss the best location for a bus shelter.

Commissioner Rokosch stated there is **an offer of \$500 per lot for Public Safety**. He stated they are doing a fiscal impact study for the provision of these services and hope to have it by the end of the year. Commissioner Rokosch discussed the pro rata for the road. Randy replied the pro rata is a requirement not a condition. Commissioner Rokosch stated Exhibit A-6 addresses the impacts on county services. He requested \$200 per house for the impacts on county services. He then asked for any further comment, hearing none.

Commissioner Rokosch stated the offered mitigation is \$500 per new lot for the Fire District payable upon final plat, \$500 per new lot for Public Safety payable upon final plat, \$500 per new lot for School District payable upon final plat approval, \$500 per new lot for School District in addition payable upon first conveyance with CPI, \$200 per new lot for impacts on county services payable upon first conveyance with CPI.

**All Commissioners voted sufficiently mitigated.**

**Effects on the Natural Environment:** Commissioner Driscoll stated there should be covenants for air quality. Commissioner Grandstaff stated she would recommend no wood stoves unless it is a secondary heating source and that the wood stove be within EPA standards. She felt that could be placed in the covenants. Commissioner Rokosch requested it be made consistent with what was included on page 18 of the Staff Report.

**All Commissioners voted sufficiently mitigated.**

**Effects on Wildlife and Wildlife Habitat:** Commissioner Rokosch asked for any differences from the Staff Report, hearing none.

**All Commissioners voted sufficiently mitigated.**

**Effects on Public Health and Safety:** Commissioner Rokosch noted this has been mitigated.

**All Commissioners voted sufficiently mitigated.**

In order to recap the amounts and mitigation being offered, Commissioner Grandstaff went over the amounts as follows: \$250 per new lot for impacts on agriculture payable to the Open Lands Program, \$500 per new lot for Corvallis Fire Department, a bus turnout and/or shelter, \$500 per new lot for the Corvallis School District deemed inadequate by the majority of the Board, \$500 per new lot for Public Safety to be divided amongst Sheriff's Office, 9-1-1 and OEM, \$200 per new lot for general county services and language of the covenants in regard to utilizing wood stoves as a secondary unit for a heat source.

Commissioner Rokosch called for a 10 minute recess.

Commissioner Rokosch reconvened the meeting and requested the developer address the above requested mitigation.

Terry stated the original mitigation offered is **\$500 per lot for Fire School, Public Safety and School District upon final plat approval. He stated they have added \$250 for Open Lands Program, \$500 per lot for the school, \$200 per lot for county services all payable upon first conveyance. (Total school contribution is \$1,000 per new lot). The covenants should include a 1,000 square foot minimum stick built only houses. For livestock covenants, it should read one horse and/or cow to one acre. No swine except for school or 4-H projects. This includes the use of wood stoves as a secondary heat source and only EPA certified.**

Terry stated the walkway would present more danger than good; therefore no walkway is being offered. Commissioner Rokosch discussed the importance of having a walkway. Cheryl asked if she could talk to the school district and see if they want walkway and bus turnout. Commissioner Rokosch requested an easement for a walkway if a walkway is requested by the school district. Russell asked if the proposed additional 5 foot easement would be sufficient. Board discussion followed regarding the 50 foot easement now being brought up to 55 feet with the additional 5 feet.

**Commissioner Grandstaff made a motion to approve Mountain View Orchards, Block 3, Lot 12, AP Minor Subdivision based on the findings of fact and conclusions of law in the Planning Staff Report and subject to the conditions in the Staff Report and mitigation conditions as stated and discussed today. Commissioner Driscoll seconded the motion, all voted 'aye'.**